IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.442 OF 2006

Vasant Pandurang Chavan & Ors. .. Applicants.
Vs.
State of Maharashtra & Ors. .. Respondents.

Mr.S.P.Kadam for the applicants.
Mrs.M.M.Deshmukh A.P.P. for the State.

CORAM : D.B.BHOSALE, J.

DATED : 19TH JULY, 2006

P.C.:

. Heard learned counsel for the applicants and learned A.P.P. for the State.

2. In this application, the applicants have made the following prayers:

(a) Rule be issued.

(b) That by an appropriate writ, order, direction it may be directed to transfer the investigation of C.R.No.158/05.

(c) That by an appropriate writ, order from Respondent No.2 to any other independent investigating agency with a further direction to carry out further investigation in C.R.No.158/2005 registered with L.T.Marg police station and file the supplementary chargesheet with such additional material."

3. On the last occasion Mr.Kadam, learned counsel for the applicants had given a list of 12 witnesses, who are neighbours of the applicants, stating that

their statements ought to have been recorded by the investigating agency and since they failed to do so the applicants have approached this Court. Ms.Deshmukh, learned A.P.P. had sought time to take instructions as to why the statements of those witnesses, as contended by the applicants, were not recorded. Today she states that the Investigating Officer did not to record their statements since they all were found to be interested witnesses. After having considered the prayers made in the application and having heard the learned counsel for the applicants and learned A.P.P. for the State I am not inclined to give such directions to the investigating agency. It is the duty of the investigating officer, to record statement/s of the witnesse/s during investigation, and in any case, he cannot be compelled to investigate the offence in particular manner or to direct to record a statement of any witness. During trial, it is always open for the defence to contend that the investigation was not fair and if Court finds substance in the contention can make such observations and discard the evidence of the prosecution. It is also open for the defence to examine such witness as a defence witness. Keeping that in view I find no merit in the prayers made in the application. The application is, accordingly, dismissed.

(D.B.Bhosale, J.)